(9)

No. 94-6615

IN THE

Supreme Court of the United States

October Term, 1995

CARL THOMPSON,

Petitioner,

v.

PATRICK KEOHANE, Warden,
BRUCE M. BOTELHO, Attorney General,
State of Alaska,

Respondents.

On Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

BRIEF OF AMICUS CURIAE ON THE MERITS IN SUPPORT OF RESPONDENTS*

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*The States joining in this brief are listed in the attached Appendix.

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QUESTION PRESENTED

In a habeas corpus action brought by a state prisoner, did the Ninth Circuit Court of Appeals err in applying a presumption of correctness to the state court's finding that Thompson was not in custody when he was interviewed by the police?

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INTEREST OF AMICUS CURIAE

This case presents the question of the standard of review to be applied in habeas proceedings to the custody issue under *Miranda v. Arizona*, 384 U.S. 436 (1966). The states are required to defend their judgments of conviction in federal court based on claims that *Miranda* was violated. The states, therefore, have a substantial interest in the resolution of the question presented.

SUMMARY OF ARGUMENT

The question of custody for the purpose of giving *Miranda* warnings is a factual issue to be resolved by state courts, whose findings cannot be overturned in a federal habeas proceeding, unless they are not fairly supported by the record. Resolution of the custody issue requires application of a reasonable person standard and evaluation of multiple factors. Trial judges are in a better position than reviewing courts to perform these functions. Due to myriad factual situations, de novo review of custody determinations would not guarantee uniformity in the law.

Miranda is a judicially-created rule of procedure. It can be violated without violating the constitution. When that happens, evidence that was obtained by constitutionally permissible police conduct is excluded from a trial. Excluding such evidence interferes with the powers and functions of the other branches of the government to create and enforce the criminal law. It, therefore, would be inappropriate to equate *Miranda* with constitutional rights in order to justify creating a de novo standard of review in habeas proceedings.

The cost of relitigating *Miranda* issues de novo in federal court outweighs any perceived benefits. State courts fairly and competently adjudicate *Miranda* claims, and their decisions are rarely overturned on habeas review. Scarce resources must be spent to defend state judgments against frivolous and harassing attacks by state prisoners. The result is needless friction between the two court systems.

ARGUMENT

WHETHER A PERSON WAS "IN CUSTODY" DURING A POLICE INTERVIEW IS A QUESTION OF FACT ENTITLED TO THE § 2254(D) PRESUMPTION OF CORRECTNESS.

Section 2254(d)(8) of Title 28, United States Code, provides, in pertinent part:

> In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court...shall be presumed to be correct, unless...the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record.... [T]he burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

This provision has been applied to state court determinations of competency to stand trial—*Maggio v. Fulford*, 462 U.S. 111, 113-117 (1983); competency to waive right to postconviction review—*Demosthenes v. Baal*, 495 U.S. 731, 735 (1990); culpability—*Cabana v. Bullock*, 474 U.S. 376, 387-390 (1986) (did the defendant kill, attempt to kill, or intend that a killing take place); *disavowed on other grounds, Pope v. Illinois*, 481 U.S. 497 (1987); voluntariness of guilty plea in a prior proceeding—*Marshall v. Lonberger*, 459 U.S. 422, 431-437 (1983) (did the defendant know that he was pleading guilty to attempted murder); and juror bias—*Patton v. Yount*, 467 U.S. 1025, 1036-38 (1984) (could the jurors set aside their bias based on pretrial publicity), *Wainwright v. Witt*, 469 U.S. 412, 426-430 (1985) (could the

juror who opposed capital punishment set aside her bias), *Rushen v. Spain*, 464 U.S. 114, 120-122 (1983) (was the juror biased because a friend of hers had been murdered in an unrelated case and because she communicated privately with the judge on the matter during the trial). The States joined herein as amici curiae seek application of § 2254(d)(8) to *Miranda* issues as well.[1]

The prophylactic rule created in *Miranda* has spawned considerable litigation on a wide range of issues.[2] The focus of the analysis in this brief is the custody issue. A suspect has been taken into custody when he has been formally arrested or when his freedom of movement has been restricted to the degree associated with a formal arrest. All of the circumstances surrounding the interview are relevant to a determination of this issue, except for the uncommunicated state of mind of either the suspect or the interviewing officer. The test turns on what a reasonable person in the suspect's position would have understood his position to be. *Stansbury v. California*, 114 S.Ct. 1526, 128 L.Ed.2d 293, 298-301 (1994). Some of the factors to be considered in determining the custody issue are (1) the location of the interview, (2) who initiated the interview; (3) the suspect's

1 In *Wright v. West*, 112 S.Ct. 2482 (1992), the Court, in the interests of federalism, finality, and fairness, should have established a deferential standard of review for all mixed questions on habeas review, but the Court was unpersuaded to do so in that case. Although Justice O'Connor, concurring in *Wright*, opted for plenary review of mixed questions, *id.*, at 2493-97, in a later case, she correctly argued for elimination of all review of fully and fairly litigated *Miranda* issues, *Withrow v. Williams*, 113 S.Ct. 1745, 1756 (1993) (O'Connor, J. concurring and dissenting).

2 For example: was the suspect in custody; was the suspect interrogated; were warnings given; were warnings adequate; did the suspect waive his right to counsel and silence; were the waivers knowingly and intelligently entered; were the waivers voluntary; did the suspect reassert his right to counsel or right to silence at anytime during questioning; and did exigent circumstances exist which excused the failure to give the warnings.

mode of transportation to the interview; (4) the restrictions placed on the suspect's freedom during the interview; and (5) the suspect's knowledge that he was free to leave based on communications with the police.

The circuit courts are divided on the standard of review of the custody issue. Several circuit courts have applied the clearly erroneous standard or its habeas counterpart (fairly supported by the record).[3] A deferential standard of review also has been applied to the comparable issue of whether a person was "seized" under the Fourth Amendment.[4] By contrast, a few of the circuit courts have reviewed the issue de novo, either in the context of determining custody under *Miranda*,[5] or in the context of determining a seizure under the Fourth Amendment.[6] The state courts likewise are split

3 *U.S. v. Lanni*, 951 F.2d 440, 443 (1st Cir. 1991); *U.S. v. Griffin*, 922 F.2d 1343, 1347-48 (8th Cir. 1990); *Jenner v. Smith*, 982 F.2d 329, 334 (8th Cir. 1993) (state habeas), *cert. denied*, 114 S.Ct. 81 (1993); *People of the Territory of Guam v. Palomo*, 35 F.3d 368, 375 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 750 (1995); *Cordoba v. Hanrahan*, 910 F.2d 691, 693 (10th Cir.) (state habeas), *cert. denied*, 498 U.S. 1014 (1990); *Purvis v. Dugger*, 932 F.2d 1413, 1418-19, 1422 (11th Cir. 1991) (state habeas), *cert. denied*, 503 U.S. 940 (1992).

4 *U.S. v. Harris*, 31 F.3d 153, 155 (4th Cir. 1994); *U.S. v. Silva*, 957 F.2d 157, 158 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 250 (1992); *U.S. v. Teslim*, 869 F.2d 316, 321 (7th Cir. 1989); *U.S. v. Dewitt*, 946 F.2d 1497, 1502 (10th Cir. 1991), *cert. denied*, 502 U.S. 1118 (1992).

5 *U.S. v. Kirsteins*, 906 F.2d 919, 923 (2d Cir. 1990); *U.S. v. Calisto*, 838 F.2d 711, 718 (3rd Cir. 1988); *U.S. v. Cooper*, 800 F.2d 412, 414-15 (4th Cir. 1986); *Davis v. Allsbrooks*, 778 F.2d 168, 171 (4th Cir. 1985) (state habeas); *U.S. v. Collins*, 972 F.2d 1385, 1406 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 1812 (1993); *Cobb v. Perini*, 832 F.2d 342, 346 (6th Cir. 1987) (state habeas), *cert. denied*, 486 U.S. 1024 (1988); *U.S. v. Torkington*, 874 F.2d 1441, 1445 (11th Cir. 1989); *Jacobs v. Singletary*, 952 F.2d 1282, 1291 (11th Cir. 1992) (state habeas).

6 *U.S. v. McKines*, 933 F.2d 1412, 1426 (8th Cir. 1991) (en banc), *cert. denied*, 502 U.S. 985 (1991); *U.S. v. Maragh*, 894 F.2d 415, 417 (D.C. 1990), *cert. denied*, 498 U.S. 880 (1990).

on the custody issue, some treating it as a question of fact[7] and others as a question of law.[8]

In a concurring and dissenting opinion in *U. S. v. Humphrey*, 34 F.3d 551, 559 (7th Cir. 1994), Chief Judge Posner recently explained *why* the custody issue should be reviewed under a deferential standard of review, not de novo:

> The question whether a given interrogation was "custodial," like the question whether the defendant's statement came in response to an "interrogation," is one of applying a legal concept to facts, since "custody" is a legal concept, just like "interrogation." It might seem that "custody" is only nominally a legal concept—that you don't have to be a lawyer to know that a person is in custody when he is not free to leave; if he tried he would be stopped. The intentions of the police and the understanding of the suspect are facts that, unlike negligence, or possession, or "interrogation," do not require any filtering through legal concepts. If that were true, it would be even plainer that the proper standard of appellate review was clear error, as no one doubts that in the case of a "pure" question of fact, the trial court's finding must be upheld unless clearly erroneous.

7 *People v. Dracon*, 884 P.2d 712, 717 (Colo. 1994); *State v. Primus*, 440 S.E.2d 128, 129 (S.C. 1994); *State v. Carroll*, 645 A.2d 82, 87 (N.H. 1994); *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989); *People v. Foster*, 552 N.E.2d 1112, 1125 (Ill. App. Ct. 5 Dist. 1990), *appeal denied*, 555 N.E.2d 380 (Ill. 1990); *Murry v. State*, 635 S.W.2d 237, 241 (Ark. 1982); *People v. Yukl*, 307 N.Y.S.2d 857, 859, 256 N.E.2d 172 (N.Y. 1969), *cert. denied*, 400 U.S. 851 (1970); *Maine v. State*, 607 A.2d 1185, 1194-95 (Del. 1992).

8 *State v. Sweatt*, 427 S.E.2d 112, 118 (N.C. 1993); *State v. Clappes*, 344 N.W.2d 141, 143 (Wis. 1984); *Matter of E.A.H.*, 612 A.2d 836, 838 (D.C. App. 1992).

> It is not true. The legal definition of custody departs from the lay understanding. The intentions of the police have been ruled out of bounds and so too the understanding of the suspect. He is in custody only if a reasonable person in his position would not think himself free to leave. As in the law of negligence, so in the law as to when the *Miranda* warnings must be given, the question whether a person acted reasonably in the circumstances facing him is a question about the application of a legal standard (reasonableness) to the facts. No doubt the line between pure facts on the one hand and on the other hand, the application to them of a legal standard that is as non-technical—as commonsensical—as reasonableness is a faint one. But that is simply one more reason why both questions are and should be governed by the same standard of review, that of clear error. [citations to cases and rules omitted]

Albeit *Humphrey* was a direct appeal case, a "factual" issue does not metamorphose into a "legal" issue just because the proceeding changes. If the clearly erroneous standard of review is to be applied to the issue on direct appeal, the "fairly supported by the record" standard must be applied to it on habeas review.[9]

9 Cases obviously are not decided merely by determining what happened (who, what, when, where, and how). Cases involve either pure questions of law, such as the facial constitutionality of a statute, or mixed questions of law and fact. The most common example of the latter is a tort case. There the jury must decide what the defendant did (historical fact) and whether his conduct was negligent by comparing it to that of a reasonable person (application of law to facts). *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402 (1990) (issue of negligence generally subject to deferential review). To say that issues involving law application are to be reviewed de novo is to say that all issues must be reviewed de novo.

In *Miller v. Fenton*, 474 U.S. 104, 113-114 (1985), the Court acknowledged that labeling an issue "is sometimes as much a matter of allocation as it is of analysis," and that "the fact/law distinction at times has turned on a determination that...one judicial actor is better positioned than another to decide the issue in question." Taking that approach, there are two reasons for allocating the custody issue to the trial court. First, trial courts are an essential part of the judicial system; they are not just entrance gates to higher courts for resolution of disputes:

> That an appellate court not simply ignore that the case has been earlier decided expresses in part a recognition that the trial court was more than an entrance gate. When an appellate court starts afresh, a trial court's function is reduced to that of collecting data and providing an opportunity for an extrajudicial resolution of the dispute. Even this function would experience a reduction in value as expectation of a judicial decision of consequence shifts wholly away from the trial court. The pyramidal shape of our present court structure rests on the institutional integrity of the trial court as a distinct part of the justice system. As such review is extended upward, only the last "court" in the chain retains full institutional integrity. More is afoot here than nostalgic or romantic reverence for trial courts. Finality and all values bound up in that precept are implicated.

O'Bryan v. Estelle, 714 F.2d 365, 392 (5th Cir. 1983) (Higginbotham, J. concurring), *cert. denied*, 465 U.S. 1013 (1984), cited with approval in *Wainwright v. Witt*, 469 U.S. at 428 n. 10 (1985).

Second, the custody issue involves a multifactor test, which inextricably intertwines fact and law:

> Multifactor tests do not comprise separable "questions of law." Rules of law influence the application of the factors, and appellate courts may ensure that district judges understand and apply these rules. But whenever the court must determine "reasonableness" or climb the tiers of a multifactor approach, the result is a gestalt, not a legal conclusion. Little is gained, and much can be lost, by having three judges redo the work of one.

U.S. v. Malin, 908 F.2d 163, 169-170 (7th Cir. 1990) (Easterbrook, J. concurring) (discussion of probable cause determinations), *cert. denied*, 498 U.S. 991 (1990). Although *Malin* was a direct appeal case, Judge Easterbrook's analysis is equally applicable in a habeas proceeding. No rational justification exists for applying a more stringent standard of review to a habeas case than to a direct appeal case.

De novo review of fact-bound issues, like the one at issue here, will not guarantee uniformity in the law. In *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. at 405, the Court stated:

> [S]ome variation in the application of a standard based on reasonableness is inevitable. Fact-bound resolutions cannot be made uniform through appellate review, de novo or otherwise. An appellate court's review of whether a legal position was reasonable or plausible enough under the circumstances is unlikely to establish clear guidelines for lower courts; nor will it clarify the underlying principles of law. [citations and quotations omitted]

Of a similar vein was the Court's reasoning in *Container Corp. of America v. Franchise Tax Bd*, 463 U.S. 159, 176 (1983), a state taxing power case:

> It will do the cause of legal certainty little good if this Court turns every colorable claim that a state

> court erred in a particular application of those principles [defining the constitutional limits on the unitary business principle] into a de novo adjudication, whose unintended nuances would then spawn further litigation and an avalanche of critical comment. Rather, our task must be to determine whether the state court applied the correct standards to the case; and if it did, whether its judgment "was within the realm of permissible judgment." [citation and footnotes omitted]

See, also, Judge Mikva's dissenting opinion in *U.S. v. Maragh,* 894 F.2d at 420-425, relating to the standard of review of the "seizure" issue under the Fourth Amendment.

Other reasons exist for reviewing *Miranda* issues deferentially in habeas proceedings. First, proof of a *Miranda* violation does not establish a constitutional violation, and absent a constitutional (or statutory) violation, there is no authority for federal courts to reverse state convictions. *Victor v. Nebraska,* 114 S.Ct. 1239, 127 L.Ed.2d 583, 597 (1994) ("[W]e have no supervisory power over the state courts").[10] If federal courts insist on reviewing nonconstitutional claims of state prisoners, at the very least, a deferential standard of review must be applied. Second, when the judiciary suppresses constitutionally permissible evidence, it usurps the power of the legislature to enact substantive criminal law and the power of the executive to enforce it.[11] Third, *Miranda* regulates the conduct of the police during a criminal investigation. It does not regulate the conduct of the judge or the parties during the course of the trial. Given

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10 *See, also,* Sara Beale, *Reconsidering Supervisory Power in Criminal Cases: Constitutional and Statutory Limits on the Authority of the Federal Courts,* 84 COLUM. L. REV. 1433, 1514-1516 (1984).

11 Beale, *supra,* note 10 at 1515-1516.

that their own conduct is not at issue, state judges can be expected to decide *Miranda* issues impartially. Fourth, the remedy for *Miranda* violations is at odds with the primary function of the courts to seek the truth. *U.S. v. Nixon,* 418 U.S. 683, 709 (1974) ("The very integrity of the judicial system and public confidence depend on full disclosure of all the facts, within the framework of the rules of evidence"). Reliable confessions are sometimes suppressed under *Miranda*. Fifth, *Miranda* violations do not implicate the factual accuracy of the defendant's conviction. Sixth, convictions have not been historically overturned because of *Miranda* violations. Seventh, there are no inherent problems in raising or litigating *Miranda* issues in state court.

State courts "possess primary authority for defining and enforcing the criminal law," including federal constitutional rights of the accused. *Kuhlmann v. Wilson,* 477 U.S. 436, 453-54 n. 16 (1986); *Tibbs v. Florida,* 457 U.S. 31, 45 (1982).[12] In fulfilling their duty under our dual system of government, the state courts are entitled to the same degree of respect as is accorded the federal courts:

> [C]omity...[means] a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a...belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound

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12 In 1982, 12 million criminal cases were filed in state courts and in the District of Columbia, compared to 32,700 in federal court. *Michigan v. Long,* 463 U.S. 1032, 1042 n. 8 (1983).

> to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.

Younger v. Harris, 401 U.S. 37, 44-45 (1971).

Federal habeas review is *not* "the principal avenue for challenging a conviction." It is an "extraordinary remedy" against fundamentally unfair convictions. *Brecht v. Abrahamson*, 113 S.Ct. 1710, 1719 (1993); *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983) ("Federal courts are not forums in which to relitigate state trials"). In 1990, state prisoners filed 10,809 federal habeas petitions, and the district courts disposed of 10,125 petitions, approximately 90% of which required, by implication, action by the states to defend their judgments and sentences. Of 1,626 federal petitions disposed of in four states (California, Alabama, New York, and Texas), only 17 (1.05%) were granted.[13] In

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13 VICTOR FLANGO, NATIONAL CENTER FOR STATE COURTS, STATE JUSTICE INSTITUTE, HABEAS CORPUS IN STATE AND FEDERAL COURTS 14, 22, 61, (1994) (hereinafter 1994 State Justice Institute Study).

consideration of these statistics, it is evident that state prisoners have turned habeas into an "ordinary" remedy and converted its purpose to that of relieving the boredom of prison life and providing a mechanism for continued acts of aggression against society. Habeas review, as such, is a constant source of friction between the two court systems. *Kuhlmann v. Wilson*, 477 U.S. at 453-54 n. 16; *Engle v. Isaac*, 456 U.S. 107, 126-128 (1982).

State courts fairly and competently adjudicate federal claims. In 1983, Professors Solimine and Walker published the results of a study of 1,046 decisions of state appellate and federal district courts on federal issues involving the First, Fourth, and Fourteenth Amendments covering a 7-year period (1974 through 1980). The study disclosed that "there is simply no widespread disregard for the vindication of federal rights in state appellate courts."[14] In 1989, the authors, rebuking some criticisms, responded that "based on the only extant empirical evidence, relative parity between state and federal courts exists, and parity bodes well for the continued operation of judicial federalism."[15] The authors further argued that parity exists because of the increasing similarity in state and federal rules of procedures; the relative similarity in the characteristics of state and federal judges; the selection of state and federal judges from the same milieu; the frequency with which state judges are appointed to the federal bench; the uncontested nature of most judicial elections; and the trend toward merit selection

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14 Michael Solimine & James Walker, *Constitutional Litigation in Federal and State Courts: An Empirical Analysis of Judicial Parity*, 10 HASTINGS CONST. L. Q. 213, 252 (1983) (hereinafter Solimine I).

15 Michael Solimine & James Walker, *State Court Protection of Federal Constitutional Rights*, 12 HARV. J.L. & PUB. POLY 127, 138-148 (1989) (hereinafter Solimine II).

of state judges.[16] The study conducted by the State Justice Institute revealed that "state courts are doing a good job in protecting federal constitutional rights."[17] Two former state court judges, who are now on the federal bench, Justice O'Connor and Judge Aldisert, have maintained similar views.[18]

State courts are neither hostile nor indifferent to *Miranda* issues. In 1981, Professor Gruhl published the results of a survey of state and federal supreme court opinions decided between 1976 and 1979 on four *Miranda* issues. The study disclosed that "state supreme courts generally enforced the requirements [of *Miranda*] throughout the 1970s," consistent with precedent from this Court.[19] Several states have decided *Miranda* issues in the defendant's favor only to be reversed by this Court.[20] Other states give defendants

16 Solimine I, 10 HASTINGS CONST. L. Q. at 225-232; Solimine II, 12 HARV. J. OF L. & PUB. POLICY at 135-137.

17 1994 State Justice Institute Study, 90-91.

18 *See, e.g.*, Sandra O'Connor, *Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge*, 22 WM. & MARY L. REV. 801, 813-814 (1981) ("There is no reason to assume that state court judges cannot and will not provide a 'hospitable forum' in litigating federal constitutional questions"); Ruggero Aldisert, *State Courts and Federalism in the 1980s: Comment*, 22 WM. & MARY L. REV. 821, 824 (1981) ("My own evaluation of both state supreme court and federal circuit judges is that most meet Professor Bator's test of '[c]onscientiousness, dedication, idealism, openness, enthusiasm, [and] willingness to listen and to learn—all the mysterious components of the subtle art of judging well.' ").

19 John Gruhl, *State Supreme Courts and the U.S. Supreme Court's Post-Miranda Rulings*, 72 J. CRIM. LAW & CRIMINOLOGY 886, 911 (1981).

20 *See, e.g.*, *California v. Beheler*, 463 U.S. 1121 (1983); *Colorado v. Spring*, 479 U.S. 564 (1987); *Colorado v. Connelly*, 479 U.S. 157 (1986); *Illinois v. Perkins*, 496 U.S. 292 (1990); *Minnesota v. Murphy*, 465 U.S. 420 (1984); *Oregon v. Mathiason*, 429 U.S. 492 (1977); and *Pennsylvania v. Bruder*, 488 U.S. 9 (1988).

greater rights than does *Miranda*,[21] and at least two states have read *Miranda* into the state constitution.[22]

The Court has repeatedly expressed its confidence in the state courts' ability and willingness to adequately protect federal constitutional rights. *See, e.g., Huffman v. Pursue*, Ltd., 420 U.S. 592, 611 (1975) ("Appellee is in truth urging us to base a rule on the assumption that state judges will not be faithful to their constitutional responsibilities," and "[t]his we refuse to do"); *Stone v. Powell*, 428 U.S. 465, 493 n. 35 (1976) ("[W]e are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States"); *Moore v. Sims*, 442 U.S. 415, 430 (1979) ("The price exacted in terms of comity would only be outweighed if state courts were not competent to adjudicate federal constitutional claims—a postulate we have repeatedly and emphatically rejected"); and *Pennzoil v. Texaco*, 481 U.S. 1, 17 (1987) ("[W]e cannot say that [the Texas] courts, when this suit was filed, would have been any less inclined than a federal court to address and decide the federal constitutional claims"). The results reached in these cases demonstrate clear acknowledgment of the state courts' comprehension of federal constitutional questions and their willingness to decide the issues in a responsible manner. *Stone* held that fully and fairly litigated Fourth Amendment search and seizure claims would not be relitigated on habeas, and the other three cases held that district courts could not intervene in pending state criminal and civil proceedings. In subsequent decisions—*Maggio, Demosthenes, Cabana,*

21 *See, e.g., Utah v. Wood*, 868 P.2d 70, 82 (Utah 1993); *Bryan v. State*, 571 A.2d 170, 175-177 (Del. 1990); *State v. Reed*, 627 A.2d 630, 643-47 (N.J. 1993); *State v. Stoddard*, 537 A.2d 446 (Conn. 1988); *State v. Gravel*, 601 A.2d 678, 685 (N.H. 1991).; *Com. v. Snyder*, 597 N.E.2d 1363, 1368-69 (Mass. 1992).

22 *Traylor v. State*, 596 So.2d 957, 965-966 (Fla. 1992); *State v. Menne*, 380 So.2d 14, 17 (La. 1980), *cert. denied*, 449 U.S. 833 (1980).

Marshall, Patton, Witt, and Rushen—the Court has maintained the fundamental trust in the state courts that was expressed in *Stone*.[23]

In summary, close supervision of *Miranda* claims is no longer required. After thirty years, the law is well settled, and courts fully understand it. Absent some compelling reason to do otherwise, the same deferential standard applied to the "seizure" issue under *Stone v. Powell* should be applied to the "custody" issue under *Miranda*. State courts have proven their sensitivity and receptiveness to *Miranda* claims, and they will continue to provide as valid and constitutionally sound review as any federal court.

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23 Even academic critics of the Court's recent habeas jurisprudence concede that the presumption of factual correctness found in section 2254(d) is justified. *See, e.g.*, LARRY YACKLE, RECLAIMING THE FEDERAL COURTS 171-172 (1994). The most crucial part of a case is the fact finding, given that the outcome of a case frequently turns on which witnesses are believed. If state judges are competent and trustworthy to find the facts, surely they can take the incremental and necessary step of applying the law to the facts.

CONCLUSION

The judgment of the Ninth Circuit should be affirmed. The Court should hold that in an action brought under 28 U.S.C. § 2254, the federal court must give deference to a state court's finding on the issue of whether a person was in custody when interviewed by the police.

Respectfully submitted,

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APPENDIX

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